

United States District Court
for the
Western District of New York

United States of America

v.

Case No. 20-mj-1128

DAVID RUBEL

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

(1) On or about August 2, 2020, in the County of Erie, in the Western District of New York, the defendant, DANIEL RUBEL, did knowingly employ, use, persuade, entice, and coerce a minor who was under the age of 18 years, to engage in sexually explicit conduct as defined in Title 18, United States Code, Section 2256(2), for the purpose of producing visual depictions of such conduct, using materials that have been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, and the visual depictions were transported and transmitted using any means and facility of interstate and foreign commerce and the visual depictions were transported and transmitted in and affecting interstate and foreign commerce, in violation of **Title 18, United States Code, Section 2251(a) and 2251(e)**; and

(2) Between July 20, 2020 and August 9, 2020, in the County of Erie, in the Western District of New York, the defendant, DAVID RUBEL, did knowingly possess child pornography, as defined in Title 18, United States Code, Section 2256(8), in violation of **Title 18, United States Code, Section 2252A(a)(5)(B)**.

This Criminal Complaint is based on these facts:


☒ Continued on the attached sheet.


Complainant's signature

ERIC SCHMIDT
TASK FORCE OFFICER
FEDERAL BUREAU OF INVESTIGATION
Printed name and title

Sworn to before me and signed telephonically.

Date: August 19, 2020


Judge's signature

City and State: Buffalo, New York

HONORABLE JEREMIAH J. MCCARTHY
UNITED STATES MAGISTRATE JUDGE
Printed name and title

AFFIDAVIT IN SUPPORT OF COMPLAINT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

I, Eric Schmidt, being duly sworn, depose and say:

1. I am a Task Force Officer of the Federal Bureau of Investigation and have been on the Child Exploitation Task Force (CETF) since April 2017. I have been employed as a police officer with the Town of Tonawanda Police Department since January 2002. As a member of the CETF, I work on cases associated with the Violent Crimes Against Children program, which targets individuals involved in the on line sexual exploitation of children. As part of these duties, I have become involved in the investigation of suspected violations of Title 18, United States Code, Sections 2251, 2252, and 2252A.

2. I have also participated in various FBI mandated and volunteer training for the investigation and enforcement of federal child pornography laws in which computers and electronic media are used as the means for receiving, transmitting, and storing child pornography.

3. I make this affidavit in support of a criminal complaint charging **DAVID RUBEL (hereinafter “RUBEL”)** with a violation of Title 18 U.S.C. Sections 2251 [sexual exploitation of a child] and 2252A [possession of child pornography].

4. The statements contained in this affidavit are based on my involvement in this investigation, as well as information provided to me by other law enforcement officers involved in this investigation, and upon my training and experience. Because this affidavit is being submitted for the limited purpose of seeking a criminal complaint, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that **RUBEL** violated Title 18, United States Code, Section 2251 and 2252A.

I. THE INVESTIGATION AND FACTUAL BASIS

5. On or about August 10, 2020, I learned that the Town of Tonawanda Police Department (TTPD) was investigating an incident related to the possible production of child pornography. I was contacted by TTPD Patrol Lieutenant N. Salonikis, who stated that the complainant (hereinafter PARENT), had filed a police report, alleging that **RUBEL** had been texting his 16 year old juvenile daughter (hereinafter VICTIM), and that some of the texts he observed were sexual in nature. PARENT stated to the reporting officer that he observed inappropriate images on VICTIM's device within a text thread between VICTIM and **RUBEL**. PARENT did sign a consent form consenting to the search of VICTIM's device and provided a supporting deposition to Town of Tonawanda Detective F. Dirienzo, stating that he observed the text messages and that some of them were sexual in nature to include an image of an adult penis. PARENT also stated that VICTIM turned 16 years old in late July 2020.

6. On August 11, 2020, TFO Schmidt conducted a cellular extraction of VICTIM's Apple iPhone device. After reviewing the extraction report a text conversation between VICTIM's phone number and (716)534-1578, listed as "Dave"(glass of beer emoji)" was located. The following texts are excerpts from that conversation:

Monday, July 20, 2020 1:58am

From Dave: Want to see u naked

From VICTIM so please never stop being you never change what you do the things we do stays between me and you and I can promise you that forever.

please don't be

(an image of a female vagina and torso was then sent by VICTIM. There is also a piercing on the navel of the female's body.)

From Dave: I wontsexy

(an image of an erect penis was then sent to VICTIM. A white toilet and bathroom vanity are visible in the image)

(another image of **RUBEL** taking a self-portrait in a mirror was then sent. RUBEL is naked and has his penis resting on the bathroom vanity)

(another image of an erect penis is sent. A male's hand is manipulating the penis)

Monday, July 20, 2020 11:48pm

From Dave: (image of an erect male penis is sent to VICTIM. Toilet and bathroom vanity are visible in the image. The male is wearing red shorts and red Nike sandals.)

From VICTIM: want it now

From DAVE: me too

From VICTIM: no I want you more than u want me

From DAVE: I want wetpussy

From VICTIM: Mine

Two images of a female vagina are then sent by VICTIM (the same piercing from the images sent by VICTIM in earlier chat is visible in one image)

From DAVE: Yum want it

From VICTIM: Do you

From DAVE: Hell yea

From VICTIM: yess that's what I like to hear.

But you don't want me as much as I want you

Tuesday, July 21, 2020 11:02am

From DAVE: Get up an get naked lol

From VICTIM: (an image of VIC posing topless in a bathroom mirror is sent)

Saturday, July 25, 2020 2:27am

From DAVE: Im going bath room play with my cick think of u

From VICTIM: I love you with all my heart

want some pictures

From DAVE: Ditto

Ysa

From VICTIM: (Four images are sent by VICTIM, all four show the VICTIM's vagina.)

From DAVE: Sexy assshell libe u naked an bennd over

7. During my extraction of VICTIM's phone, I also found two videos of VICTIM masturbating which VICTIM sent to **RUBEL** at or near the same time as the above-note text exchanges. The forensic data confirms VICTIM sent the videos to RUBEL at (716)534-1578.

8. On August 11, 2020, **RUBEL** was interviewed by Town of Tonawanda Police Detective A. Cavarello. **RUBEL** was advised of his Miranda Rights by Detective Cavarello and agreed to speak with Detective Cavarello. During the interview, **RUBEL** admitted to exchanging text messages of a sexually explicit nature with VICTIM. **RUBEL** also admitted during the interview that he requested naked images of VICTIM, and that VICTIM sent him images of her breasts and vagina. He also admitted to sending VICTIM images of his penis. **RUBEL** admitted that he had kissed VICTIM on cheek and may have accidentally grabbed one of her breasts or buttocks while wrestling or playing in the pool. **RUBEL** also consented to a search of his cellular device.

9. On August 11, 2020, VICTIM was interviewed by Town of Tonawanda Police Detective Cavarello. VICTIM admitted that she and **RUBEL** had texted each other and that the content of the texts was sexual in nature. VICTIM stated that **RUBEL** had requested that she send him naked images. VICTIM admitted that she did send him images of her breasts and vagina approximately five times. VICTIM stated that she did not voluntarily send the images in the beginning, and felt pressured to do so, but that it got easier to do. VICTIM stated that **RUBEL** sent her images of his penis and texted her things like "horny" or "I want you". VICTIM stated that **RUBEL** also told her he wanted to "eat her

out”. Based on my knowledge, training and experience in child exploitation crimes, **RUBEL’s** desire to “eat her out” means putting his mouth on the VICTIM’s vagina to derive sexual pleasure for himself and the VICTIM. VICTIM stated to Detective Cavarello that she and **RUBEL** did not have any sexual contact in person.

10. On August 11, 2020, an administrative subpoena was sent to AT&T(Cricket) for subscriber information regarding phone number (716)534-1578. On August 12, 2020, AT&T(Cricket) responded with the following information:

BILLING PARTY

Name: DAVID RUBEL
Billing Address: 181 Pullman Ave, Kenmore, NY 14217

USER INFORMATION

MSISDN: (716) 534-1578

11. On August 12, 2020, TFO Schmidt conducted a cellular extraction on the LG cellular device belonging to **RUBEL**. An image was located on the device in the “trash” folder within the image gallery folder. The image is of an erect male penis. This same image is located on the VICTIM’s device in the text messages between **RUBEL** and VICTIM, and was sent to VICTIM on Wednesday, August 5, 2020 at 9:23pm. The title of the image shows as “Message_1596676923783.jpg” with a date of August 5, 2020 at 9:22pm according to the detail’s information on **RUBEL’s** device.

12. On August 11, 2020, **RUBEL** was interviewed by Town of Tonawanda Police Detective Cavarello. When asked by Detective Cavarello whether **RUBEL** knew how old VICTIM was, **RUBEL** told them, “She was 15 last month, but now she is 16.” Additionally,

there is a text exchange between **RUBEL** and **VICTIM** on July 27, 2020 at 8:37 a.m. wherein **RUBEL** tells **VICTIM**, "Happy birthday love you hope your day goes good." Finally, **RUBEL** got to know **VICTIM** because **RUBEL** was dating **VICTIM**'s mother.

13. Based on the foregoing, there is probable cause to believe that **RUBEL** violated Title 18 United States Code Sections 2251 and 2252A.



ERIC M. SCHMIDT
Task Force Officer
Federal Bureau of Investigation

Sworn and subscribed to telephonically this

19th day of August, 2020.



HON. JEREMIAH J. McCARTHY
United States Magistrate Judge

United States District Court
for the
Western District of New York

United States of America

v.

DAVID RUBEL

Case No. 20-mj-1128

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay **DAVID RUBEL**, who is accused of an offense or violation based on the following document filed with the Court:

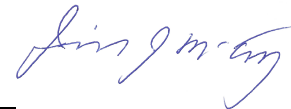
☐ Indictment ☐ Superseding Indictment ☐ Information ☐ Superseding Information ☒ Complaint
☐ Probation Violation Petition ☐ Supervised Release Violation Petition ☐ Violation Notice ☐ Order of the Court

This offense is briefly described as follows:

(1) On or about August 2, 2020, in the County of Erie, in the Western District of New York, the defendant, DANIEL RUBEL, did knowingly employ, use, persuade, entice, and coerce a minor who was under the age of 18 years, to engage in sexually explicit conduct as defined in Title 18, United States Code, Section 2256(2), for the purpose of producing visual depictions of such conduct, using materials that have been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, and the visual depictions were transported and transmitted using any means and facility of interstate and foreign commerce and the visual depictions were transported and transmitted in and affecting interstate and foreign commerce, in violation of **Title 18, United States Code, Section 2251(a) and 2251(e)**; and

(2) Between July 20, 2020 and August 9, 2020, in the County of Erie, in the Western District of New York, the defendant, DAVID RUBEL, did knowingly possess child pornography, as defined in Title 18, United States Code, Section 2256(8), in violation of **Title 18, United States Code, Section 2252A(a)(5)(B)**.

Date: August, 19, 2020



Issuing officer's signature

City and State: Buffalo, New York

JEREMIAH J. MCCARTHY
UNITED STATES MAGISTRATE JUDGE

Printed name and Title

Return

This warrant was received on (date) _____, and the person was arrested on (date) _____,
at (city and state) _____.

Date: _____

Arresting officer's signature

Printed name and title

**This second page contains personal identifiers provided for law-enforcement use only
and therefore should not be filed in court with the executed warrant unless under seal.**

(Not for Public Disclosure)

Name of defendant/offender: **David Rubel**

Known aliases:

Last known residence: **1117 Brighton Road, Tonawanda, NY**

Prior addresses to which defendant/offender may still have ties:

Last known employment:

Last known telephone numbers:

Place of birth: **New York**

Date of birth: **12/24/1981**

Social Security number: **121-72-5160**

Height: **5'10"** Weight: **180 lbs**

Sex: **Male** Race: **White**

Hair: **Brown** Eyes: **Hazel**

Scars, tattoos, other distinguishing marks:

History of violence, weapons, drug use:

Known family, friends, and other associates (*name, relations, address, phone number*):

FBI number: **983557JD5**

Complete description of auto:

Investigative agency and address: **Buffalo FBI: TFO ERIC SCHMIDT (716.698.4234)**

Name and telephone numbers (office and cell) of pretrial services or probation officer (*if applicable*):

Date of last contact with pretrial services or probation officer (*if applicable*):